

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

TAMARA ALEXANDER, an individual,) Case No.: CV15-04814-TJH-JC
and DAVID SULLIVAN, an individual,) Assigned to Courtroom: 20
Plaintiffs,) The Hon. Jacqueline Chooljian
vs.))
SHU BARAN, an individual) PROTECTIVE ORDER
Defendant.) Action Commenced: June 25, 2015
) Trial Date: Not Set
) Discovery Cut-Off: Not Set
) Law & Motion Cut-Off: Not Set
)

1. A. PURPOSES AND LIMITATIONS

As the parties have represented that discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, this Court enters the following Protective Order. This Order does not confer blanket protections on all disclosures or responses to discovery. The protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. Further, as set forth in Section 12.3,

1 below, this Protective Order does not entitle the parties to file confidential
2 information under seal. Rather, when the parties seek permission from the court to
3 file material under seal, the parties must comply with Civil Local Rule 79-5 and
4 with any pertinent orders of the assigned District Judge and Magistrate Judge,
5 including any procedures adopted under the Pilot Project for the Electronic
6 Submission and Filing of Under Seal Documents.

7 B. GOOD CAUSE STATEMENT

8 In light of the nature of the claims and allegations in this case and the
9 parties' representations that discovery in this case will involve the production of
10 confidential records, and in order to expedite the flow of information, to facilitate
11 the prompt resolution of disputes over confidentiality of discovery materials, to
12 adequately protect information the parties are entitled to keep confidential, to
13 ensure that the parties are permitted reasonable necessary uses of such material in
14 connection with this action, to address their handling of such material at the end of
15 the litigation, and to serve the ends of justice, a protective order for such
16 information is justified in this matter. The parties shall not designate any
17 information/documents as confidential without a good faith belief that such
18 information/documents have been maintained in a confidential, non-public manner,
19 and that there is good cause or a compelling reason why it should not be part of the
20 public record of this case.

21 2. DEFINITIONS

22 2.1 Action: The instant action: CV15-04814-TJH-JC.

23 2.2 Challenging Party: a Party or Non-Party that challenges the
24 designation of information or items under this Order.

25 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
26 how it is generated, stored or maintained) or tangible things that qualify for
27 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
28 the Good Cause Statement.

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
2 their support staff).

3 2.5 Designating Party: a Party or Non-Party that designates information or
4 items that it produces in disclosures or in responses to discovery as
5 "CONFIDENTIAL."

6 2.6 Disclosure or Discovery Material: all items or information, regardless
7 of the medium or manner in which it is generated, stored, or maintained (including,
8 among other things, testimony, transcripts, and tangible things), that are produced
9 or generated in disclosures or responses to discovery in this matter.

10 2.7 Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its counsel to serve
12 as an expert witness or as a consultant in this Action.

13 2.8 House Counsel: attorneys who are employees of a party to this Action.
14 House Counsel does not include Outside Counsel of Record or any other outside
15 counsel.

16 2.9 Non-Party: any natural person, partnership, corporation, association,
17 or other legal entity not named as a Party to this action.

18 2.10 Outside Counsel of Record: attorneys who are not employees of a
19 party to this Action but are retained to represent or advise a party to this Action
20 and have appeared in this Action on behalf of that party or are affiliated with a law
21 firm which has appeared on behalf of that party, and includes support staff.

22 2.11 Party: any party to this Action, including all of its officers, directors,
23 employees, consultants, retained experts, and Outside Counsel of Record (and their
24 support staffs).

25 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
26 Discovery Material in this Action.

27 2.13 Professional Vendors: persons or entities that provide litigation
28 support services (e.g., photocopying, videotaping, translating, preparing exhibits or

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)
2 and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7 3. SCOPE

8 The protections conferred by this Order cover not only Protected Material
9 (as defined above), but also (1) any information copied or extracted from Protected
10 Material; (2) all copies, excerpts, summaries, or compilations of Protected
11 Material; and (3) any deposition testimony, conversations, or presentations by
12 Parties or their Counsel that might reveal Protected Material, other than during a
13 court hearing or at trial.

14 Any use of Protected Material during a court hearing or at trial shall be
15 governed by the orders of the presiding judge. This Order does not govern the use
16 of Protected Material during a court hearing or at trial.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
22 with or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
24 including the time limits for filing any motions or applications for extension of
25 time pursuant to applicable law.

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1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1 **Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate
6 for protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited.
11 Designations that are shown to be clearly unjustified or that have been made for an
12 improper purpose (e.g., to unnecessarily encumber the case development process
13 or to impose unnecessary expenses and burdens on other parties) may expose the
14 Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, that Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 **Manner and Timing of Designations.** Except as otherwise provided in
19 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions), that the Producing Party affix
26 at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
27 legend"), to each page that contains protected material. If only a portion or
28 portions of the material on a page qualifies for protection, the Producing Party also

1 must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine
9 which documents, or portions thereof, qualify for protection under this Order.
10 Then, before producing the specified documents, the Producing Party must affix
11 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
12 only a portion or portions of the material on a page qualifies for protection, the
13 Producing Party also must clearly identify the protected portion(s) (e.g., by making
14 appropriate markings in the margins).

15 (b) for testimony given in depositions that the Designating Party
16 identifies on the record, before the close of the deposition as protected testimony.

17 (c) for information produced in some form other than documentary and
18 for any other tangible items, that the Producing Party affix in a prominent place on
19 the exterior of the container or containers in which the information is stored the
20 legend “CONFIDENTIAL.” If only a portion or portions of the information
21 warrants protection, the Producing Party, to the extent practicable, shall identify
22 the protected portion(s).

23 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive
25 the Designating Party’s right to secure protection under this Order for such
26 material. Upon timely correction of a designation, the Receiving Party must make
27 reasonable efforts to assure that the material is treated in accordance with the
28 provisions of this Order.

1 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be
8 on the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party's designation until the Court rules on the
14 challenge.

15 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is
17 disclosed or produced by another Party or by a Non-Party in connection with this
18 Action only for prosecuting, defending, or attempting to settle this Action. Such
19 Protected Material may be disclosed only to the categories of persons and under
20 the conditions described in this Order. When the Action has been terminated, a
21 Receiving Party must comply with the provisions of Section 13 below.

22 Protected Material must be stored and maintained by a Receiving Party at a
23 location and in a secure manner that ensures that access is limited to the persons
24 authorized under this Order.

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated
28 "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as
2 well as employees of said Outside Counsel of Record to whom it is reasonably
3 necessary to disclose the information for this Action;

4 (b) the officers, directors, and employees (including House Counsel) of
5 the Receiving Party to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom
7 disclosure is reasonably necessary for this Action and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional
12 Vendors to whom disclosure is reasonably necessary for this Action and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in the
17 Action to whom disclosure is reasonably necessary provided: (1) the deposing
18 party requests that the witness sign the "Acknowledgment and Agreement to Be
19 Bound" form attached as Exhibit A hereto; and (2) they will not be permitted to
20 keep any confidential information unless they sign the "Acknowledgment and
21 Agreement to Be Bound" attached as Exhibit A, unless otherwise agreed by the
22 Designating Party or ordered by the court. Pages of transcribed deposition
23 testimony or exhibits to depositions that reveal Protected Material may be
24 separately bound by the court reporter and may not be disclosed to anyone except
25 as permitted under this Protective Order; and

26 (i) any mediator or settlement officer, and their supporting personnel,
27 mutually agreed upon by any of the parties engaged in settlement discussions.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
7 shall include a copy of the subpoena or court order unless prohibited by law;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall
11 include a copy of this Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be
13 pursued by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served
15 with the subpoena or court order shall not produce any information designated in
16 this action as “CONFIDENTIAL” before a determination by the court from which
17 the subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission, or unless otherwise required by the law or court order. The
19 Designating Party shall bear the burden and expense of seeking protection in that
20 court of its confidential material and nothing in these provisions should be
21 construed as authorizing or encouraging a Receiving Party in this Action to
22 disobey a lawful directive from another court.

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
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1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

7 (1) promptly notify in writing the Requesting Party and the Non-
8 Party that some or all of the information requested is subject to a confidentiality
9 agreement with a Non-Party;

10 (2) promptly provide the Non-Party with a copy of the Protective
11 Order in this Action, the relevant discovery request(s), and a reasonably specific
12 description of the information requested; and

13 (3) make the information requested available for inspection by the
14 Non-Party, if requested.

15 (c) If a Non-Party represented by counsel fails to commence the process
16 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the
17 notice and accompanying information or fails contemporaneously to notify the
18 Receiving Party that it has done so, the Receiving Party may produce the Non-
19 Party's confidential information responsive to the discovery request. If an
20 unrepresented Non-Party fails to seek a protective order from this court within 14
21 days of receiving the notice and accompanying information, the Receiving Party
22 may produce the Non-Party's confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
24 not produce any information in its possession or control that is subject to the
25 confidentiality agreement with the Non-Party before a determination by the court
26 unless otherwise required by the law or court order. Absent a court order to the
27 contrary, the Non-Party shall bear the burden and expense of seeking protection in
28 this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not authorized
4 under this Protective Order, the Receiving Party must immediately (a) notify in
5 writing the Designating Party of the unauthorized disclosures, (b) use its best
6 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
7 person or persons to whom unauthorized disclosures were made of all the terms of
8 this Order, and (d) request such person or persons to execute the
9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
10 A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or
21 work product protection, the parties may incorporate their agreement into this
22 Protective Order.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Order abridges the right of
25 any person to seek its modification by the Court in the future.

26 12.2 Right to Assert Other Objections. No Party waives any right it
27 otherwise would have to object to disclosing or producing any information or item
28 on any ground not addressed in this Protective Order. Similarly, no Party waives

1 any right to object on any ground to use in evidence of any of the material covered
2 by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any
4 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent
5 orders of the assigned District Judge and Magistrate Judge, including any
6 procedures adopted under the Pilot Project for the Electronic Submission and
7 Filing of Under Seal Documents. Protected Material may only be filed under seal
8 pursuant to a court order authorizing the sealing of the specific Protected Material
9 at issue. If a Party's request to file Protected Material under seal is denied by the
10 court, then the Receiving Party may file the information in the public record unless
11 otherwise instructed by the court.

12 13. FINAL DISPOSITION

13 After the final disposition of this Action, as defined in Section 4, within 60
14 days of a written request by the Designating Party, each Receiving Party must
15 return all Protected Material to the Producing Party or destroy such material. As
16 used in this subdivision, "all Protected Material" includes all copies, abstracts,
17 compilations, summaries, and any other format reproducing or capturing any of the
18 Protected Material. Whether the Protected Material is returned or destroyed, the
19 Receiving Party must submit a written certification to the Producing Party (and, if
20 not the same person or entity, to the Designating Party) by the 60 day deadline that
21 (1) identifies (by category, where appropriate) all the Protected Material that was
22 returned or destroyed and (2) affirms that the Receiving Party has not retained any
23 copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel
25 are entitled to retain an archival copy of all pleadings, motion papers, trial,
26 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
27 and trial exhibits, expert reports, attorney work product, and consultant and expert
28 work product, even if such materials contain Protected Material. Any such

1 archival copies that contain or constitute Protected Material remain subject to this
2 Protective Order as set forth in Section 4.

3 14. Any violation of this Order may be punished by any and all appropriate
4 measures including, without limitation, contempt proceedings and/or monetary
5 sanctions.

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7 IT IS SO ORDERED.
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9 DATED: September 18, 2015

10 _____/s/
11 Honorable Jacqueline Chooljian
12 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on September 18, 2015 in the case of Tamara Alexander and David Sullivan v. Shu Baran, No. CV 15-04814-TJH-JC. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: